IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16338 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

MANSANG BHAILAL VASAVA & 3 - Petitioners
Versus
GANPATBHAI ICCHALABHAI VASAVA - Respondent

==========

Appearance :
MR DN PANDYA for Petitioners.
MR HEMANT B RAVAL for Respondent.

==========

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 28/12/2006

ORAL JUDGMENT

1. The petitioners – original defendants have filed this petition under Article 227 of the Constitution of India praying for quashing and setting aside the impugned judgment and order dated 07.12.2004 passed by the learned Joint District Judge, Fast Track Court No. 3, Bharuch in Misc. Civil Appeal No. 11 of 2004 whereby he has reversed the order dated 05.02.2004 passed below application Exh. 5 by the learned Civil Judge (J.D.), Jhagadia in Regular Civil Suit No. 31 of 2002.

2. It is the case of the petitioners that the respondent – original plaintiff is the real uncle of the petitioner No. 1 – original defendant No. 1. Petitioner Nos. 2 to 4 – original defendant Nos. 2 to 4 are sons of petitioner No. 1. The respondent – plaintiff has been residing in village Kurali, Tal. Karjan, Dist.

Vadodara. The impugned agricultural lands were awarded as Vartanya being State Servant from the erstwhile State of Rajpipla. Due to some village quarrel, the father of the petitioner No. 1 was imprisoned and having taken the advantage of his absence, the respondent – plaintiff in collusion with the village Talati and Secretary mutated and entered his name in record of right. The petitioner No. 1 at that time was very young and had no knowledge about the said situation. It is also the case of the petitioners that when the father of the petitioner No. 1 was in jail, a part and parcel of one of the impugned properties were conditionally sold and mortgaged to village people, and soon after the release of the father of the petitioner, the said property was got released on payment of the conditional amount. It is also the case of the petitioners that the respondent – original plaintiff has thereafter left the village and he has started residing in village Kurali, Tal. Karjan. Since then, the petitioners were stated to have been in possession of the suit land. Due to increase in value

of the properties, the respondent – plaintiff has filed Regular Civil Suit No. 31 of 2002 before the Trial Court and claimed possession over the suit property as well as injunction against the present petitioners. The Learned Civil Judge (J.D.), Jhagadia after considering the documents and evidence on record and submissions of the parties, has decided the application Exh. 5 whereby no injunction was granted by the learned Civil Judge (J.D.), Jhagadia.

3. Being aggrieved by the said order, the respondent – plaintiff has filed Misc. Civil Appeal under Order XLIII, Rule 1 of CPC before the Joint District Judge, Bharuch, who vide order dated 07.12.2004 has reversed the order passed by the Learned Trial Judge and held that the respondent – plaintiff is the owner of the suit property and, therefore, the present petitioners were restrained from entering into the suit premises and/or creating any obstacles in enjoyment of the said properties by the respondent – plaintiff.

4. It is this order which is under challenge in the present petition.

5. The petition was admitted on 03.05.2006. However, no interim relief against the judgment and order of the learned Joint District Judge was granted by this Court.

6. Mr. D.N. Pandya, learned advocate appearing for the petitioners – original defendants has submitted that the order passed by the learned Joint District Judge is absolutely unjust, illegal, arbitrary, capricious and bad in law and it is required to be quashed and set aside. He has further submitted that the present respondent – plaintiff is not residing in the village and is permanently residing at village Kurali, Tal. Karjan, Dist. Vadodara since long after the father of petitioner No. 1 – defendant No. 1 returned from imprisonment. The learned Joint District Judge has not correctly appreciated the document of release of

the mortgage and other revenue receipts which are produced by the present petitioners. The present petitioners were holding the land for the last more then 50 years and they have been regularly paying the revenue charges to the revenue authorities. He has further submitted that the village people have also filed affidavits stating that the present petitioners are in possession of the suit land. The petitioners have been cultivating the suit land since long and necessary documentary evidence to that effect were also produced before the Trial Court. He has further submitted that the Learned Trial Judge has correctly appreciated the evidence and exercised the discretion. The learned Joint District Judge has no power or authority to take different view and reverse the order of the Learned Trial Judge. He has, therefore, submitted that the order passed by the learned Joint District Judge is required to be quashed and set aside.

7. In support of his submissions, Mr. Pandya has relied

on, in all, 08 judgments of this Court as well as of the Hon'ble Supreme Court. They are as under :-

1. JT 1995 (3) S.C. 175

   Bank of Maharashtra V/s. Race Shipping & Transport Co. Pvt. Limited and Another.

2. 1992 (1) CURRENT CIVIL CASES 73

   Dalpat Kumar & Another V/s. Prahlad Singh and Others.

3. 1985 G.L.H. (U.J.) 56

   Ranjankumar Vamanrao Nandekar V/s. Sarvajanik Hindu Dharmashala, a Trust, through its trustees and others.

4. 2005 SAR (CIVIL) 559

   Ajjendraprasadji Narendraprasadji Pandey V/s. Swamy K. Narayandasji.

5. JT 2003 (6) SC 465

   Surya Dev Rai V/s. Ram Chander Rai and Others, JT 2003 (6) SC 465

6. 1999 (2) G.L.H. 85

   Punjalal Girdharbhai Patel V/s. (The) Navdeep Co-operative Bank Limited.

7. 2002 (3) G.L.R. 2227

Envision Engineering V/s. Sachin Infa Enviro Limited and Others.

8. 1990 (Supp.) SCC 727

Wander Limited and Another V/s. Antox India Private Limited.

8. Based on the aforesaid decisions and the principles laid down therein, Mr. Pandya has strongly urged that the order passed by the learned Joint District Judge is required to be quashed and set aside and the petition is required to be allowed.

9. Mr. Hemant B. Rawal, learned advocate appearing for the respondent, on the other hand, has relied on the decision of the learned Joint District Judge and submitted that this Court should not interfere while exercising its power under Article 227 of the Constitution of India. He has, therefore, submitted that the petition is required to be dismissed with cost.

10. After having heard learned advocates appearing for the respective parties and after having gone through the documentary evidence, pleadings of the parties and the authorities relied on, this Court is of the view that the decision of the learned Joint District Judge does not call for any interference by this Court while exercising its jurisdiction under Article 227 of the Constitution of India. The Learned Trial Judge while deciding Exh. 5 application has clearly observed that the plaintiff – present respondent has got a prima facie case. He has discussed at length various documentary evidence produced before him and right from 1962 onwards, all these revenue records show that the present respondent – original plaintiff is the owner of the suit property. His name is reflected in all these documents. Based on this, he has come to the conclusion that he is the owner of the property and to that extent, he has taken the view that plaintiff has a prima facie case. However, while deciding the issue of balance of convenience, he has stated that one of the suit properties was got released by the father of present petitioner No. 1

and they have paid the revenue charges and receipts have been produced by the present petitioners. On that basis, he has come to the conclusion that the present petitioners are in possession of the suit property and hence, till the suit is finally disposed of, the possession of the present petitioners should not be disturbed. As against this finding of the Learned Trial Judge, the learned Joint District Judge has also considered all these documents at length and he has come to the conclusion that not only ownership but possession is also established by the plaintiff. He has discussed in paragraphs 6 & 7 of his order wherein each and every document produced before the Trial Court was re-appreciated, reconsidered and a positive finding is given by him that the present respondent – original plaintiff is not only owner but also in possession of the suit property. Even the receipts which have been produced by the defendants – present petitioners also show the name of the original plaintiff. Based on this, the learned Joint District Judge has observed that when the Trial Court has come to the conclusion that there was a

prima facie case in favour of the plaintiff and when documentary evidence also show the possession of the present respondent - plaintiff, balance of convenience should also be held to be in favour of the plaintiff and hence, he has held that the possession of the plaintiff is required to be protected. When this positive finding is given by the appellate Court after proper appreciation of the documentary evidence, this Court is not inclined to interfere in the said finding. The judgments relied on by Mr. Pandya and ratio laid down therein would not render any assistance to the case of the present petitioners. There is no absolute ban that the Appellate Court should not interfere in the order of the Trial Court. If the Trial Court's order is highly capricious, perverse and not based on the documents, the appellate Court is well within its power to interfere in the said order.

11. In ***Surya Dev Rai V/s. Ram Chander Rai and Others, JT 2003 (6) SC 465***, the Hon'ble Supreme

Court has categorically held that where a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it has or the jurisdiction though available is being exercised in a manner not permitted by law and failure of justice or grave injustice has resulted, the High Court may step into exercise its supervisory jurisdiction. This Court is of the view that the Trial Court's order is amounting to failure of justice as despite documentary evidence, the Trial Court has misread and misinterpreted those documents resulted in miscarriage of justice.

12. In ***Ajjendraprasadji Narendraprasadji Pandey V/s. Swamy K. Narayandasji, 2005 SAR (Civil) 559***, the Hon'ble Supreme Court has observed that definite findings with regard to prima facie case, balance of convenience and irreparable loss not given and hence, the said order was set aside and the matte was remitted back for fresh consideration. Here in the present case, the learned Joint District

Judge has given definite finding that there is a prima facie case, balance of convenience and if the interim relief is not granted, it would result into irreparable loss to the plaintiff and hence, the said finding cannot be assailed before this Court in a petition under Article 227 of the Constitution of India.

13.In ***Ranjankumar Vamanrao Nandekar V/s. Sarvajanik Hindu Dharmashala, a Trust, through its trustees and others, 1985 GLH (U.J.) 56***, this Court has taken the view in light of the facts that when a party is in exclusive possession, such possession cannot be disturbed except in accordance with law. Here in the present case, documentary evidence show that the original plaintiff – present respondent is the owner of the suit property and his possession was also believed by the Appellate Court. In such a situation, if the possession is protected by the appellate Court, the same cannot be assailed before this Court in a petition under Article 227 of the Constitution of India.

14.In ***Dalpat Kumar & Another V/s. Prahlad Singh and Others, 1992 (1) CURRENT CIVIL CASES 73***, the Court has discussed the principles governing the rule of granting temporary injunction against dispossession and also enumerated nature and factors which are to be taken into account. It is celebrated principle of law that when all the three ingredients i.e. prima facie case, balance of convenience and irreparable loss are present, injunction is required to be granted. The learned Joint District Judge after enumerating all the three ingredients has granted the interim relief and this Court does not see any infirmity in the said order.

15.In ***Bank of Maharashtra V/s. Race Shipping & Transport Co. Pvt. Limited and Another, JT 1995 (3) SC 175,*** the Hon'ble Supreme Court has observed as to when the interim relief is required to be granted. Public interest and a host of other considerations are required to be given due

importance and then only, interim relief can be granted. Here in the present case, there is no question of any public interest. However, the three essential ingredients were present and hence, the interim relief was rightly granted by the learned Joint District Judge.

16.In ***Wander Limited and Another V/s. Antox India Private Limited, 1990 (Supp.) SCC 727***, the Court has held that powers under Order XXXIX, Rule 1 & 2 are discretionary powers and the Court has also enumerated relevant factors while granting such interim relief. The Court has further held that the Appellate Court should not normally interfere unless the exercise of the discretion of the Court at the first instance was arbitrary or unjust. Here in the present case, as discussed earlier, the Learned Trial Judge has exercised his jurisdiction arbitrarily. Once having found that there is a prima facie case and documentary evidence also shows that possession was with the plaintiff, there was no

reason for the Trial Court not to grant the interim relief as prayed for. The Appellate Court has, therefore, rightly interfered in the order and granted the interim relief.

17. In the case of ***Envision Engineering V/s. Sachin Infa Enviro Limited and Others, 2002 (3) G.L.R. 2227***, again this Court has put an emphasis that the Appellate Court will not interfere unless exercise of discretion by the Trial Court is arbitrary or perverse. When this Court is of the view that the discretion exercised by the Trial Court is arbitrary and perverse, the Appellate Court has rightly interfered in the said order.

18. In the case of ***Punjalal Girdharbhai Patel V/s. (The) Navdeep Co-operative Bank Limited, 1999 (2) G.L.H. 85***, this Court has held that Appellate Court would not interfere with the exercise of discretion of the Court of first instance unless such discretion is shown to have been exercised

arbitrarily or capriciously or perversely or ignoring settled principles of law regulating ground of refusal of the interlocutory injunction. From the plain reading of the orders of the Trial Court as well as the Appellate Court, it is very obvious that the discretion exercised by the Trial Court is arbitrary and perverse and hence, it was rightly interfered with by the Appellate Court.

19. Considering the aforesaid legal position and factual background of all documentary evidence and further considering the limited scope of the exercise of power by this Court under Article 227 of the Constitution of India, this Court is of the view that the learned Joint District Judge has rightly taken the view in the matter and granted interim relief which cannot be interfered with or disturbed by this Court. Since there is no substance in the present petition, the petition is accordingly dismissed. Rule discharged without any order as to costs.

20. It goes without saying that any observations which is made by the Courts below or by this Court is with regard to injunction application and are of prima facie in nature and the learned Trial Court while deciding the suit, may not be influenced and may decide the suit only on the basis of oral and documentary evidence led by the parties before it. Since the suit is of 2002, the same may be disposed off as expeditiously as possible.

[K.A. PUJ, J.]

S*avariya*